

110TH CONGRESS
1ST SESSION

H. R. 708

To amend United States trade laws to address more effectively import crises,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2007

Mr. ENGLISH of Pennsylvania introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend United States trade laws to address more
effectively import crises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Trade Law Reform Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO TITLE VII OF THE TARIFF ACT OF
1930

- Sec. 101. Captive production.
- Sec. 102. Price.
- Sec. 103. Vulnerability of industry; cumulation.
- Sec. 104. Causal relationship between imports and injury.
- Sec. 105. Prevention of circumvention.
- Sec. 106. Perishable agricultural products.
- Sec. 107. Export price and constructed export price.
- Sec. 108. Drawback adjustment in antidumping cases.
- Sec. 109. Expedited remedy where persistent dumping is present.
- Sec. 110. Countervailable subsidy.
- Sec. 111. Valuing freight for inputs in nonmarket economy country anti-dumping calculations.
- Sec. 112. Revocation of nonmarket economy country status.
- Sec. 113. Application of countervailing duties to nonmarket economy countries.
- Sec. 114. Downstream dumping.
- Sec. 115. Effective date.

TITLE II—SAFEGUARD AMENDMENTS

- Sec. 201. Amendments to chapter 1 of title II of the Trade Act of 1974.

TITLE III—INTERNATIONAL TRADE NEGOTIATIONS

- Sec. 301. Negotiating objectives regarding trade remedy laws.
- Sec. 302. Consultations and assessments regarding trade Agreements.
- Sec. 303. Effective date.

TITLE IV—CONGRESSIONAL ADVISORY COMMISSION ON WTO DISPUTE SETTLEMENT

- Sec. 401. Short title.
- Sec. 402. Congressional findings and purpose.
- Sec. 403. Establishment of Commission.
- Sec. 404. Duties of the Commission.
- Sec. 405. Powers of the Commission.
- Sec. 406. Report by United States Trade Representative.
- Sec. 407. Definitions.
- Sec. 408. Effective date.

TITLE V—STEEL IMPORT LICENSING AND MONITORING

- Sec. 501. Maintenance and expansion of steel import licensing and monitoring program.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Construction.
- Sec. 602. Application to goods from Canada and Mexico.
- Sec. 603. Participation in WTO panel proceedings.

1 **TITLE I—AMENDMENTS TO**
2 **TITLE VII OF THE TARIFF ACT**
3 **OF 1930**

4 **SEC. 101. CAPTIVE PRODUCTION.**

5 Section 771(7)(C)(iv) of the Tariff Act of 1930 (19
6 U.S.C. 1677(7)(C)(iv)) is amended to read as follows:

7 “(iv) CAPTIVE PRODUCTION.—If do-
8 mestic producers transfer internally, in-
9 cluding to affiliated persons as defined in
10 paragraph (33), significant production of
11 the domestic like product for the produc-
12 tion of a downstream article and sell sig-
13 nificant production of the domestic like
14 product in the merchant market, then the
15 Commission, in determining market share
16 and the factors affecting financial perform-
17 ance set forth in clause (iii), shall focus
18 primarily on the merchant market for the
19 domestic like product.”.

20 **SEC. 102. PRICE.**

21 Section 771(7)(C)(ii) of the Tariff Act of 1930 (19
22 U.S.C. 1677(7)(C)(ii)) is amended by adding at the end
23 the following flush sentence:

24 “The Commission shall not conclude
25 that imports of the subject merchandise do

1 not have a significant effect on prices
2 merely because of the volume of imports of
3 the subject merchandise.”.

4 **SEC. 103. VULNERABILITY OF INDUSTRY; CUMULATION.**

5 (a) VULNERABILITY.—Section 771(7)(C)(iii) of the
6 Tariff Act of 1930 (19 U.S.C. 1677(7)(C)(iii)) is amended
7 in the last sentence by striking the period at the end and
8 inserting “, including whether the industry is vulnerable
9 to the effects of imports of the subject merchandise.”.

10 (b) CUMULATION.—Section 771(7)(G)(i) of the Tar-
11 iff Act of 1930 (19 U.S.C. 1677(7)(G)(i)) is amended to
12 read as follows:

13 “(i) IN GENERAL.—For purposes of
14 clauses (i) and (ii) of subparagraph (C),
15 and subject to clause (ii), the Commission
16 shall cumulatively assess the volume and
17 effect of imports of the subject merchan-
18 dise from all countries subject to petitions
19 filed under section 702(b) or 732(b), or
20 subject to investigations initiated under
21 702(a) or 732(a), if such petitions were
22 filed, or such investigations were initiated,
23 within 90 days before the date on which
24 the Commission is required to make its
25 final injury determination, and if such im-

1 ports compete with each other and with
2 the domestic like product in the United
3 States market.”.

4 **SEC. 104. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**
5 **INJURY.**

6 Section 771(7)(E)(ii) of the Tariff Act of 1930 (19
7 U.S.C. 1677(7)(E)(ii)) is amended by adding at the end
8 the following: “The Commission need not determine the
9 significance of imports of the subject merchandise relative
10 to other economic factors.”.

11 **SEC. 105. PREVENTION OF CIRCUMVENTION.**

12 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.
13 1677j(c)) is amended by adding at the end the following
14 new paragraph:

15 “(3) SPECIAL RULE.—The administering au-
16 thority shall apply paragraph (1) with respect to al-
17 tered merchandise excluded from the merchandise
18 description used in an outstanding order or finding,
19 if such application is not inconsistent with the af-
20 firmative determination of the Commission on which
21 the order or finding is based.”.

22 **SEC. 106. PERISHABLE AGRICULTURAL PRODUCTS.**

23 (a) DEFINITION OF INDUSTRIES.—Section 771(4)(A)
24 of the Tariff Act of 1930 (19 U.S.C. 1677(4)(A)) is
25 amended by adding at the end the following: “If the Com-

1 mission determines that an agricultural product has a
2 short shelf life and is a perishable product, the Commis-
3 sion shall treat the producers of the product in a defined
4 period or season as the domestic industry. If the sub-
5 heading under the Harmonized Tariff Schedules of the
6 United States for an agricultural product has a 6- or 8-
7 digit classification based on the period of time during the
8 calendar year in which the product is harvested or im-
9 ported, such periods of time constitute a defined period
10 or season for purposes of this paragraph.”.

11 (b) DETERMINATION OF INJURY.—Section
12 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.
13 1677(7)(D)) is amended by adding at the end the fol-
14 lowing new clauses:

15 “(iii) In the case of an agricultural in-
16 dustry involving a perishable product with
17 a short shelf life, if a request for seasonal
18 evaluation has been made by the peti-
19 tioners, the Commission shall consider the
20 factors in subparagraph (C) on a seasonal
21 basis during the period identified as rel-
22 evant.

23 “(iv) In the case of agricultural prod-
24 ucts, partially picked or unpicked crops
25 and abandoned acreage may be considered

1 in lieu of other measures of capacity and
2 capacity utilization.

3 “(v) The impact of other factors, such
4 as weather, on agricultural production and
5 producers shall not be weighed against the
6 contribution of the imported subject mer-
7 chandise to the condition of the domestic
8 industry.”.

9 **SEC. 107. EXPORT PRICE AND CONSTRUCTED EXPORT**
10 **PRICE.**

11 Section 772(c)(2)(A) of the Tariff Act of 1930 (19
12 U.S.C. 1677a(c)(2)(A)) is amended by inserting after “du-
13 ties” the following: “(including any antidumping duties,
14 any countervailing duties, and those temporary duties that
15 are proclaimed to provide import relief)”.

16 **SEC. 108. DRAWBACK ADJUSTMENT IN ANTIDUMPING**
17 **CASES.**

18 Section 772(c)(1)(B) of the Tariff Act of 1930 (19
19 U.S.C. 1677a(c)(1)(B)) is amended by inserting after
20 “United States,” the following: “but only to the extent
21 necessary to offset import duties that have been paid on
22 inputs used in the production of subject merchandise sold
23 in the home market,”.

1 **SEC. 109. EXPEDITED REMEDY WHERE PERSISTENT DUMP-**
2 **ING IS PRESENT.**

3 Section 732(a)(2) of the Tariff Act of 1930 (19
4 U.S.C. 1673a(a)(2)) is amended—

5 (1) by striking subparagraph (A) and inserting
6 the following:

7 “(A) INITIATION OF EXPEDITED INVES-
8 TIGATION.—An expedited antidumping duty in-
9 vestigation shall be initiated with respect to a
10 particular class or kind of merchandise that is
11 subject to an existing antidumping order within
12 20 days of the request of an interested party
13 described in subparagraph (C), (D), (E), (F),
14 or (G) of section 771(9), if the administering
15 authority determines, from information avail-
16 able to it, that imports of such class or kind of
17 merchandise have increased materially from an
18 additional supplier country, as defined in sub-
19 paragraph (C), during a period of 90 days or
20 during a longer period as determined by the ad-
21 ministering authority to be appropriate. The re-
22 quest shall allege and present supporting infor-
23 mation that such imports are occurring. The
24 administering authority, in making a deter-
25 mination under this subparagraph, shall con-
26 sider the public record of its investigation of

1 imports of merchandise subject to the existing
2 antidumping order.”;

3 (2) by striking subparagraph (B) and inserting
4 the following:

5 “(B) INCREASED MATERIALLY.—The ad-
6 ministering authority shall consider imports of
7 merchandise from an additional supplier coun-
8 try to have increased materially if such imports
9 have increased by 15 percent or more over the
10 amount of such imports during a period of com-
11 parable duration preceding initiation of the
12 antidumping investigation of imports of mer-
13 chandise subject to the existing antidumping
14 order.”; and

15 (3) by striking subparagraph (D) and inserting
16 the following:

17 “(D) PROCEDURES AND INJURY DETER-
18 MINATIONS FOR EXPEDITED INVESTIGA-
19 TIONS.—

20 “(i) The provisions of subsections
21 (b)(3), (c)(4), (d), and (e) of this section,
22 section 733 (b), (d), and (e), section 734
23 (a), (b), (c), (d), (e), (f), (i), (k), and (l),
24 and section 735 (a), (c), (d), and (e) shall
25 apply to expedited investigations under this

1 paragraph, except that the administering
2 authority shall issue a preliminary deter-
3 mination within 90 days of receiving a re-
4 quest for an investigation under subpara-
5 graph (A).

6 “(ii) Not later than 45 days after the
7 date on which the request under subpara-
8 graph (A) is received by the administering
9 authority, the Commission shall determine
10 if there is a reasonable indication of mate-
11 rial injury or threat of material injury as
12 prescribed in section 733(a)(1).

13 “(iii) If the Commission makes an af-
14 firmative determination that there is a rea-
15 sonable indication of material injury and
16 the administering authority makes an af-
17 firmative final determination, the Commis-
18 sion shall make a final determination as
19 prescribed in section 735(b)(1) before the
20 later of—

21 “(I) the 120th day after the day
22 on which the administering authority
23 makes its affirmative preliminary de-
24 termination under this subparagraph,
25 or

1 “(II) the 45th day after the day
2 on which the administering authority
3 makes its affirmative final determina-
4 tion under section 735(a).

5 “(iv) The Commission shall make a
6 determination under this subparagraph
7 from reasonably available information (in-
8 cluding public information on the adminis-
9 trative record of its investigation of im-
10 ports of merchandise subject to the exist-
11 ing antidumping order).

12 “(v) An affirmative final determina-
13 tion shall not be made unless the Commis-
14 sion determines pursuant to the factors de-
15 scribed in sections 735(b)(1) and 771(7)
16 that an industry in the United States is
17 materially injured, or threatened with ma-
18 terial injury, by reason of imports of the
19 subject merchandise and that imports of
20 the subject merchandise are not neg-
21 ligible.”.

22 **SEC. 110. COUNTERVAILABLE SUBSIDY.**

23 (a) DEFINITION OF COUNTERVAILABLE SUBSIDY.—
24 Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C.
25 1677(5)(E)), as amended by this Act, is further amended

1 by adding at the end the following: “If there is a reason-
2 able indication that a financial contribution by the provi-
3 sion of goods or services has distorted prices for those
4 goods or services in the country that is subject to the in-
5 vestigation or review, or if data regarding such prices are
6 otherwise unavailable, then the administering authority
7 shall measure adequacy of remuneration by reference to
8 data regarding prices for the same or a similar good or
9 service from outside the country that is subject to the in-
10 vestigation or review. The administering authority shall
11 adjust such data to the extent practicable to reflect pre-
12 vailing market conditions in that country. If there is a rea-
13 sonable indication that prices within a political subdivi-
14 sion, dependent territory, or possession of a foreign coun-
15 try are distorted, or data are not available, then the ad-
16 ministering authority shall measure adequacy of remu-
17 nation in that political subdivision, dependent territory,
18 or possession by reference to data from the most com-
19 parable area or region in which prices are not distorted,
20 regardless of whether it is in the same country.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to any determination under sec-
23 tion 705 or 751 of the Tariff Act of 1930 (19 U.S.C.
24 1671d, 1675) that is made on or after January 1, 2002,
25 including published determinations for which judicial or

1 binational panel review has been initiated or completed
 2 pursuant to section 516A of that Act (19 U.S.C. 1516a).
 3 To the extent that the amendment made by subsection (a)
 4 may be relevant to any such determination that has al-
 5 ready been made, the administering authority shall amend
 6 the determination and associated countervailing duty
 7 order to bring them into compliance with the amendment
 8 made by subsection (a), and shall undertake new adminis-
 9 trative proceedings, if necessary, to do so.

10 **SEC. 111. VALUING FREIGHT FOR INPUTS IN NONMARKET**
 11 **ECONOMY COUNTRY ANTIDUMPING CAL-**
 12 **CULATIONS.**

13 Section 773(c)(3) of the Tariff Act of 1930 (19
 14 U.S.C. 1677b(c)(3)) is amended—

15 (1) in subparagraph (C) by striking “and” at
 16 the end;

17 (2) in subparagraph (D) by striking the period
 18 at the end and inserting “, and”; and

19 (3) by adding at the end the following:

20 “(E) transportation costs based upon the
 21 actual freight distances required to transport
 22 material inputs from the unaffiliated supplier or
 23 unaffiliated suppliers, or from the first unaffili-
 24 ated supplier where the input is obtained from

1 an affiliate, to the producer or exporter of the
 2 foreign like product.”.

3 **SEC. 112. REVOCATION OF NONMARKET ECONOMY COUN-**
 4 **TRY STATUS.**

5 (a) AMENDMENT OF DEFINITION OF “NONMARKET
 6 ECONOMY COUNTRY”.—Section 771(18)(C)(i) of the Tar-
 7 iff Act of 1930 (19 U.S.C. 1877(18)(C)(i)) is amended
 8 by striking “until revoked by the administering authority”
 9 and inserting “until revoked by a resolution enacted con-
 10 sistent with section 113 of the Trade Law Reform Act
 11 of 2007”.

12 (b) NOTIFICATION BY PRESIDENT.—Whenever the
 13 administering authority makes a final determination
 14 under section 771(18)(C)(i) of the Tariff Act of 1930 (19
 15 U.S.C. 1877(18)(C)(i)) to revoke the determination that
 16 a foreign country is a nonmarket economy country, the
 17 President shall notify the Committee on Ways and Means
 18 of the House of Representatives and the Committee on
 19 Finance of the Senate of that determination within 10
 20 days after its publication in the Federal Register.

21 (c) RULES OF HOUSE OF REPRESENTATIVES AND
 22 SENATE.—Subsections (c) through (i) of this section are
 23 enacted by the Congress—

24 (1) as an exercise of the rulemaking power of
 25 the House of Representatives and the Senate, re-

1 spectively, and as such they are deemed a part of
2 the rules of each House, respectively, but applicable
3 only with respect to the procedure to be followed in
4 that House in the case of approval resolutions de-
5 scribed in subsection (d) of this section; and they su-
6 persede other rules only to the extent that they are
7 inconsistent therewith; and

8 (2) with full recognition of the constitutional
9 right of either House to change the rules (so far as
10 relating to the procedure of that House) at any time,
11 in the same manner and to the same extent as in
12 the case of any other rule of that House.

13 (d) DEFINITION.—For purposes of this section, the
14 term “approval resolution” means only a joint resolution
15 of the two Houses of the Congress, the matter after the
16 resolving clause of which is as follows: “That the Congress
17 approves the change of non-market economy status with
18 respect to the products of _____ transmitted by the
19 President to the Congress on _____.”, the first
20 blank space being filled in with the applicable country, and
21 the second blank space being filled with the appropriate
22 date.

23 (e) INTRODUCTION.—When a notification submitted
24 under subsection (b) is transmitted to the House of Rep-
25 resentatives and the Senate, an approval resolution with

1 respect to such agreement shall be introduced (by request)
2 in the House by the majority leader of the House, for him-
3 self, or by Members of the House designated by the major-
4 ity leader of the House; and shall be introduced (by re-
5 quest) in the Senate by the majority leader of the Senate,
6 for himself, or by Members of the Senate designated by
7 the majority leader of the Senate.

8 (f) AMENDMENTS PROHIBITED.—No amendment to
9 an approval resolution shall be in order in either the
10 House of Representatives or the Senate; and no motion
11 to suspend the application of this subsection shall be in
12 order in either House, nor shall it be in order in either
13 House for the Presiding Officer to entertain a request to
14 suspend the application of this subsection by unanimous
15 consent.

16 (g) PERIOD FOR COMMITTEE AND FLOOR CONSIDER-
17 ATION.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), if the committee or committees of either
20 House to which an approval resolution has been re-
21 ferred have not reported it at the close of the 45th
22 day after its introduction, such committee or com-
23 mittees shall be automatically discharged from fur-
24 ther consideration of the bill or resolution and it
25 shall be placed on the appropriate calendar. A vote

1 on final passage of the bill or resolution shall be
 2 taken in each House on or before the close of the
 3 15th day after the bill or resolution is reported by
 4 the committee or committees of that House to which
 5 it was referred, or after such committee or commit-
 6 tees have been discharged from further consideration
 7 of the bill or resolution. If prior to the passage by
 8 one House of an approval resolution of that House,
 9 that House receives the same approval resolution
 10 from the other House, then—

11 (A) the procedure in that House shall be
 12 the same as if no or approval resolution had
 13 been received from the other House, but

14 (B) the vote on final passage shall be on
 15 the approval resolution of the other House.

16 (2) COMPUTATION OF DAYS.—For purposes of
 17 paragraphs (1) and (2), in computing a number of
 18 days in either House, there shall be excluded any
 19 day on which that House is not in session.

20 (h) FLOOR CONSIDERATION IN THE HOUSE.—

21 (1) MOTION PRIVILEGED.—A motion in the
 22 House of Representatives to proceed to the consider-
 23 ation of an approval resolution shall be highly privi-
 24 leged and not debatable. An amendment to the mo-
 25 tion shall not be in order, nor shall it be in order

1 to move to reconsider the vote by which the motion
2 is agreed to or disagreed to.

3 (2) DEBATE LIMITED.—Debate in the House of
4 Representatives on an approval resolution shall be
5 limited to not more than 20 hours, which shall be
6 divided equally between those favoring and those op-
7 posing the bill or resolution. A motion further to
8 limit debate shall not be debatable. It shall not be
9 in order to move to recommit an approval resolution
10 or to move to reconsider the vote by which an ap-
11 proval resolution is agreed to or disagreed to.

12 (3) MOTIONS TO POSTPONE.—Motions to post-
13 pone, made in the House of Representatives with re-
14 spect to the consideration of an approval resolution,
15 and motions to proceed to the consideration of other
16 business, shall be decided without debate.

17 (4) APPEALS.—All appeals from the decisions
18 of the Chair relating to the application of the Rules
19 of the House of Representatives to the procedure re-
20 lating to an approval resolution shall be decided
21 without debate.

22 (5) OTHER RULES.—Except to the extent spe-
23 cifically provided in the preceding provisions of this
24 subsection, consideration of an approval resolution
25 shall be governed by the Rules of the House of Rep-

1 representatives applicable to other bills and resolutions
2 in similar circumstances.

3 (i) FLOOR CONSIDERATION IN THE SENATE.—

4 (1) MOTION PRIVILEGED.—A motion in the
5 Senate to proceed to the consideration of an ap-
6 proval resolution shall be privileged and not debat-
7 able. An amendment to the motion shall not be in
8 order, nor shall it be in order to move to reconsider
9 the vote by which the motion is agreed to or dis-
10 agreed to.

11 (2) DEBATE LIMITED.—Debate in the Senate
12 on an approval resolution, and all debatable motions
13 and appeals in connection therewith, shall be limited
14 to not more than 20 hours. The time shall be equally
15 divided between, and controlled by, the majority
16 leader and the minority leader or their designees.

17 (3) CONTROL OF DEBATE.—Debate in the Sen-
18 ate on any debatable motion or appeal in connection
19 with an implementing bill or approval resolution
20 shall be limited to not more than 1 hour, to be
21 equally divided between, and controlled by, the
22 mover and the manager of the bill or resolution, ex-
23 cept that in the event the manager of the bill or res-
24 olution is in favor of any such motion or appeal, the
25 time in opposition thereto, shall be controlled by the

1 minority leader or his designee. Such leaders, or ei-
 2 ther of them, may, from time under their control on
 3 the passage of an or approval resolution, allot addi-
 4 tional time to any Senator during the consideration
 5 of any debatable motion or appeal.

6 (4) OTHER MOTIONS.—A motion in the Senate
 7 to further limit debate is not debatable. A motion to
 8 recommit an approval resolution is not in order.

9 **SEC. 113. APPLICATION OF COUNTERVAILING DUTIES TO**
 10 **NONMARKET ECONOMY COUNTRIES.**

11 (a) IN GENERAL.—Section 701(a)(1) of the Tariff
 12 Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by insert-
 13 ing “(including a nonmarket economy country)” after
 14 “country” each place it appears.

15 (b) EFFECTIVE DATE.—The amendments made by
 16 subsection (a) apply to petitions filed under section 702
 17 of the Tariff Act of 1930 on or after the date of the enact-
 18 ment of this Act.

19 **SEC. 114. DOWNSTREAM DUMPING.**

20 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
 21 iff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by
 22 inserting after section 771B the following:

23 **“SEC. 771C. DOWNSTREAM DUMPING.**

24 **“(a) DEFINITIONS.—As used in this section:**

1 “(1) DOWNSTREAM DUMPING.—The term
2 ‘downstream dumping’ means the routine use of one
3 or more depressed-price products as a significant
4 part, component, assembly, subassembly, or material
5 in the manufacture or production of merchandise.

6 “(2) DEPRESSED-PRICE PRODUCT.—The term
7 ‘depressed-price product’ means a product purchased
8 at a price that is lower than either or both of the
9 following:

10 “(A) The generally available price of the
11 product in the country of manufacture or pro-
12 duction.

13 “(B) The price that would be the generally
14 available price of the product in the country of
15 manufacture or production but for the depress-
16 ing or suppressing effect of subsidies or sales at
17 below foreign market value, or both, with re-
18 spect to that product.

19 “(3) SIGNIFICANT.—For purposes of this sec-
20 tion, products are a ‘significant’ part, component,
21 assembly, subassembly, or material in the manufac-
22 ture or production of merchandise if, and only if, the
23 cost, in the aggregate, of those products represents
24 20 percent or more of the total cost of the merchan-
25 dise.

1 “(4) PRESUMPTION.—If an antidumping duty
2 is imposed on merchandise under section 731, the
3 administering agency shall presume for purposes of
4 this section that the products used in the manufac-
5 ture or production of such merchandise are de-
6 pressed-price products.

7 “(b) INCLUSION OF AMOUNT ATTRIBUTABLE TO
8 DOWNSTREAM DUMPING.—If the administering authority
9 determines that downstream dumping of a product is oc-
10 curring or has occurred with respect to merchandise, the
11 antidumping duty imposed on such merchandise shall, for
12 each such product, be increased by an amount equal to
13 the amount by which the price at which the product was
14 purchased exceeds the price specified in subsection
15 (a)(2)(A) or the price specified in subsection (a)(2)(B),
16 whichever is higher.

17 “(c) SCOPE OF INQUIRY OF ADMINISTERING AU-
18 THORITY.—The administering authority is not required,
19 in undertaking an investigation under subtitle B, to con-
20 sider whether downstream dumping of a product is occur-
21 ring or has occurred with respect to merchandise, beyond
22 that state in the manufacture or production of the mer-
23 chandise that immediately precedes the final manufac-
24 turing or production state before export to the United
25 States, unless information reasonably available to the ad-

1 ministering authority indicates that such dumping is oc-
2 ccurring or has occurred before such immediately preceding
3 stage and is having or has had a significant effect on the
4 price of the merchandise.”.

5 (b) IMPOSITION OF ANTIDUMPING DUTIES.—Section
6 731(2) of the Tariff Act of 1930 (19 U.S.C. 1673(2)) is
7 amended—

8 (1) by striking “or” at the end of subparagraph
9 (A)(ii);

10 (2) by inserting “or” at the end of subpara-
11 graph (B); and

12 (3) by inserting after subparagraph (B) the fol-
13 lowing:

14 “(C) an industry producing a product used
15 in the manufacture or production of the foreign
16 merchandise has been materially injured or
17 threatened with material injury, or the estab-
18 lishment of such an industry in the United
19 States has been materially retarded,”.

20 (c) DEFINITION OF INTERESTED PARTY.—Subpara-
21 graphs (C), (D), (E), and (F) of section 771(9) of the
22 Tariff Act of 1930 (19 U.S.C. 1677(9)) are each amended
23 by inserting after “product” the following: “or a product
24 that is used in the manufacture or production of a like
25 product”.

1 (d) CONFORMING AMENDMENT.—The table of con-
 2 tents for title VII of the Tariff Act of 1930 is amended
 3 by inserting after the item relating to section 771B the
 4 following:

“Sec. 771C. Downstream dumping.”.

5 **SEC. 115. EFFECTIVE DATE.**

6 Except as otherwise specifically provided by this title,
 7 the amendments made by this title shall apply with respect
 8 to determinations made under title VII of the Tariff Act
 9 of 1930 that—

10 (1) are made with respect to investigations ini-
 11 tiated or petitions filed on or after the date of the
 12 enactment of this Act; or

13 (2) have not become final as of such date of en-
 14 actment.

15 **TITLE II—SAFEGUARD**
 16 **AMENDMENTS**

17 **SEC. 201. AMENDMENTS TO CHAPTER 1 OF TITLE II OF THE**
 18 **TRADE ACT OF 1974.**

19 (a) TEST FOR POSITIVE ADJUSTMENTS TO IMPORT
 20 COMPETITION.—Section 201(a) of the Trade Act of 1974
 21 (19 U.S.C. 2251(a)) is amended by striking “be a sub-
 22 stantial cause of serious injury, or the threat thereof,” and
 23 inserting “cause or threaten to cause serious injury”.

24 (b) INVESTIGATIONS AND DETERMINATIONS.—Sec-
 25 tion 202 of such Act (19 U.S.C. 2252) is amended—

1 (1) in subsection (b)(1)(A), by striking “be a
2 substantial cause of serious injury, or the threat
3 thereof,” and inserting “cause or threaten to cause
4 serious injury”;

5 (2) by amending subsection (b)(1)(B) to read
6 as follows:

7 “(B) For purposes of this section, the term
8 ‘cause’ refers to a cause that contributes signifi-
9 cantly to serious injury, or the threat thereof, to the
10 domestic industry but need not be equal to or great-
11 er than any other cause.”;

12 (3) in subsection (c)—

13 (A) by amending paragraph (1)(A) to read
14 as follows:

15 “(A) with respect to serious injury—

16 “(i) change in the level of sales, pro-
17 duction, productivity, capacity utilization,
18 profits and losses, and employment;

19 “(ii) the significant idling of produc-
20 tive facilities in the domestic industry;

21 “(iii) the inability of a significant
22 number of firms to carry out domestic pro-
23 duction operations at a reasonable level of
24 profit; and

1 “(iv) significant unemployment or
2 underemployment within the domestic in-
3 dustry;”;

4 (B) in paragraph (1)(B)—

5 (i) in clause (iii) by striking “; and”
6 and inserting “, and”; and

7 (ii) by inserting after clause (iii) the
8 following:

9 “(iv) foreign production capacity, for-
10 eign inventories, the level of demand in
11 third country markets, and the availability
12 of other export markets to absorb any ad-
13 ditional exports; and”;

14 (C) by amending paragraph (1)(C) to read
15 as follows:

16 “(C) with respect to cause—

17 “(i) the rate, amount, and timing of
18 the increase in imports of the product con-
19 cerned in absolute and relative terms, in-
20 cluding whether there has been a substan-
21 tial increase in imports over a short period
22 of time; and

23 “(ii) the share of the domestic market
24 taken by increased imports.”;

1 (D) by redesignating paragraphs (3)
2 through (6) as paragraphs (5) through (8), re-
3 spectively;

4 (E) by striking paragraph (2) and insert-
5 ing the following:

6 “(2) In making determinations under para-
7 graph (1)(A) and (B), if domestic producers inter-
8 nally transfer, including to affiliated persons as de-
9 fined in section 771(33) of the Tariff Act of 1930,
10 significant production of the article like or directly
11 competitive with the imported article for the produc-
12 tion of a downstream article and sell significant pro-
13 duction of the article like or directly competitive
14 with the imported article in the merchant market,
15 then the Commission, in determining market share
16 and the factors affecting financial performance set
17 forth in paragraph (1)(A) and (B), shall focus pri-
18 marily on the merchant market for the article like
19 or directly competitive with the imported article.

20 “(3) In making determinations under sub-
21 section (b), the Commission shall—

22 “(A) consider the condition of the domestic
23 industry over the course of the relevant busi-
24 ness cycle, but may not aggregate the causes of
25 declining demand associated with a recession or

1 economic downturn in the United States econ-
2 omy into a single cause of serious injury or
3 threat of injury; and

4 “(B) examine factors other than imports
5 which may cause or threaten to cause serious
6 injury to the domestic industry.

7 The Commission shall include the results of its ex-
8 amination under subparagraph (B) in the report
9 submitted by the Commission to the President under
10 subsection (e).

11 “(4) In making determinations under sub-
12 section (b), the Commission shall consider whether
13 any change in the volume of imports that has oc-
14 curred since a petition under subsection (a) was filed
15 or a request under subsection (b) was made is re-
16 lated to the pendency of the investigation, and if so,
17 the Commission may reduce the weight accorded to
18 the data for the period after the petition under sub-
19 section (a) was filed or the request under subsection
20 (b) was made in making its determination of serious
21 injury, or the threat thereof.”; and

22 (F) in paragraph (5), as so redesignated—

23 (i) by striking “and (B)” and insert-
24 ing “, (B), and (C)”; and

1 (ii) by striking “be a substantial cause
2 of serious injury, or the threat thereof,”
3 and inserting “cause or threaten to cause
4 serious injury”;

5 (4) in subsection (d)—

6 (A) in paragraph (1)(A)(ii), by striking
7 “be, or likely to be a substantial cause of seri-
8 ous injury, or the threat thereof,” and inserting
9 “cause, or be likely to cause, or threaten to
10 cause, or be likely to threaten to cause, serious
11 injury”;

12 (B) in paragraph (1)(C), in the matter fol-
13 lowing clause (ii), by striking “a substantial
14 cause of serious injury, or the threat thereof,”
15 and inserting “causing or threatening to cause
16 serious injury”;

17 (C) by amending paragraph (2)(A) to read
18 as follows:

19 “(2)(A) When a petition filed under subsection
20 (a) or a request filed under subsection (b) alleges
21 that critical circumstances exist and requests that
22 provisional relief be provided under this subsection
23 with respect to imports of the article identified in
24 the petition or request, the Commission shall, not
25 later than 45 days after the petition or request is

1 filed, determine, on the basis of available informa-
2 tion, whether—

3 “(i) there is clear evidence that increased
4 imports (either actual or relative to domestic
5 production) of the article are causing or threat-
6 ening to cause serious injury to the domestic in-
7 dustry producing an article like or directly com-
8 petitive with the imported article; and

9 “(ii) delay in taking action under this
10 chapter would cause damage to that industry
11 that would be difficult to repair.

12 “In making the evaluation under clause (ii), the
13 Commission should consider, among other factors
14 that it considers relevant, the timing and volume of
15 the imports, including whether there has been a sub-
16 stantial increase in imports over a short period of
17 time, and any other circumstances indicating that
18 delay in taking action under this chapter would
19 cause damage to the industry that would be difficult
20 to repair.”; and

21 (D) in paragraph (2)(D), by striking “30”
22 and inserting “20”.

23 (c) PRESIDENTIAL DETERMINATIONS.—

1 (1) ACTION BY PRESIDENT.—Section 203(a) of
2 the Trade Act of 1974 (19 U.S.C. 2253(a)) is
3 amended—

4 (A) in paragraph (1)(A), by striking “and
5 provide greater economic and social benefits
6 than costs” and inserting “and will not have an
7 adverse impact on the United States clearly
8 greater than the benefits of such action”;

9 (B) in paragraph (2)(F), by striking “com-
10 pensation;” at the end of clause (iii) and insert-
11 ing the following: “compensation, except that
12 the President shall give substantially greater
13 weight to the factors set out in clause (i) than
14 to those set out in clauses (ii) and (iii);”; and

15 (C) by amending paragraph (2)(I) to read
16 as follows:

17 “(I) the potential for harm to the national
18 security of the United States; and”.

19 (2) IMPLEMENTATION OF ACTION REC-
20 OMMENDED BY COMMISSION.—(A) Section 203(c) of
21 the Trade Act of 1974 (19 U.S.C. 2253(c)) is
22 amended by striking “90” and inserting “60”.

23 (B) Section 152(c)(1) of the Trade Act of 1974
24 (19 U.S.C. 2192(c)(1)) is amended by striking “not
25 counting any day which is excluded under section

1 154(b),” and inserting “counting all calendar days
2 in the case of a resolution described in subsection
3 (a)(1)(A), and not counting any day which is ex-
4 cluded under section 154(b) in the case of a resolu-
5 tion described in subsection (a)(1)(B),”.

6 (d) CONFORMING AMENDMENTS.—

7 (1) Section 203(e)(6)(B) of the Trade Act of
8 1974 (19 U.S.C. 2253(e)(6)(B)) is amended by
9 striking “substantially”.

10 (2) Section 264(c) of the Trade Act of 1974
11 (19 U.S.C. 2354(c)) is amended by striking “a sub-
12 stantial cause of serious injury or threat thereof”
13 and inserting “causing or threatening to cause seri-
14 ous injury”.

15 (3) Section 154(b) of the Trade Act of 1974
16 (19 U.S.C. 2194(b)) is amended by striking the
17 matter that precedes paragraph (1) and inserting
18 the following:

19 “(b) The 60-day period referred to in section 203(c)
20 and the 90-day period referred to in section 407(c)(2)
21 shall be computed by excluding—”.

TITLE III—INTERNATIONAL TRADE NEGOTIATIONS

SEC. 301. NEGOTIATING OBJECTIVES REGARDING TRADE REMEDY LAWS.

Section 2102(b)(14) of the Trade Act of 2002 (19 U.S.C. 3801(b)) is amended by adding at the end the following flush sentence:

“In order to carry out subparagraph (A), the United States Trade Representative should refuse to agree to any proposal, whether in the context of a trade agreement entered into under the auspices of the World Trade Organization, or a free trade agreement with another country or group of countries, that would, either individually or in combination with other proposals, weaken existing United States trade remedy laws contained in title VII of the Tariff Act of 1930 or chapter 1 of title II of the Trade Act of 1974, including any proposal that would make obtaining relief under these provisions more difficult, uncertain, or costly for domestic industries to achieve or maintain over time.”.

SEC. 302. CONSULTATIONS AND ASSESSMENTS REGARDING TRADE AGREEMENTS.

Section 2104(d)(3)(A) of the Trade Act of 2002 (19 U.S.C. 3804(d)(3)(A)) is amended—

1 (1) in clause (i), by striking “and” after the
2 semicolon;

3 (2) in clause (ii), by striking the period and in-
4 serting a semicolon; and

5 (3) by adding after clause (ii) the following:

6 “(iii) with respect to each specific pro-
7 posal that could require amendments to
8 title VII of the Tariff Act of 1930 or chap-
9 ter 1 of title II of the Trade Act of 1974,
10 whether and to what extent the proposal
11 would, either individually or in combination
12 with other proposals, make obtaining relief
13 under these provisions more difficult, un-
14 certain, or costly for domestic industries to
15 achieve or maintain over time; and

16 “(iv) for each specific proposal that
17 the President reports would not (whether
18 individually or in combination with other
19 proposals) make obtaining relief under title
20 VII of the Tariff Act of 1930 or chapter
21 1 of title II of the Trade Act of 1974 more
22 difficult, uncertain, or costly for domestic
23 industries to achieve or maintain over
24 time, a detailed explanation providing the
25 basis for this conclusion.”.

1 **SEC. 303. EFFECTIVE DATE.**

2 The amendments made by this title take effect on the
3 date of the enactment of this Act.

4 **TITLE IV—CONGRESSIONAL AD-**
5 **VISORY COMMISSION ON WTO**
6 **DISPUTE SETTLEMENT**

7 **SEC. 401. SHORT TITLE.**

8 This title may be cited as the “Congressional Advi-
9 sory Commission on WTO Dispute Settlement Act”.

10 **SEC. 402. CONGRESSIONAL FINDINGS AND PURPOSE.**

11 (a) FINDINGS.—The Congress finds the following:

12 (1) The United States joined the World Trade
13 Organization as an original member with the goal of
14 creating an improved global trading system and pro-
15 viding expanded economic opportunities for United
16 States firms and workers.

17 (2) The dispute settlement rules of the WTO
18 were created to enhance the likelihood that govern-
19 ments will observe their WTO obligations.

20 (3) These dispute settlement rules help ensure
21 that the United States can reap the full benefits of
22 its participation in the WTO.

23 (4) Successful operation of the WTO dispute
24 settlement system was critical to congressional ap-
25 proval of the Uruguay Round Agreements and is
26 critical to continued support by the United States

1 for the WTO. In particular, it is imperative that dis-
2 pute settlement panels and the Appellate Body—

3 (A) operate with fairness and in an impar-
4 tial manner;

5 (B) strictly observe the terms of reference
6 and any applicable standard of review set forth
7 in the Uruguay Round Agreements; and

8 (C) not add to the obligations, or diminish
9 the rights, of WTO members under the Uru-
10 guay Round Agreements in violation of Articles
11 3.2 and 19.2 of the Dispute Settlement Under-
12 standing.

13 (5) An increasing number of reports by dispute
14 settlement panels and the Appellate Body have
15 raised serious concerns within the Congress about
16 the ability of the WTO dispute settlement system to
17 operate in accordance with paragraph (4).

18 (6) In particular, several reports of dispute set-
19 tlement panels and the Appellate Body have added
20 to the obligations and diminished the rights of WTO
21 members, particularly under the Agreement on Im-
22 plementation of Article VI of the General Agreement
23 on Tariffs and Trade 1994, the Agreement on Sub-
24 sidies and Countervailing Measures, and the Agree-
25 ment on Safeguards.

1 (7) In order to come into compliance with re-
2 ports of dispute settlement panels and the Appellate
3 Body that have been adopted by the Dispute Settle-
4 ment Body, the Congress may need to amend or re-
5 peal statutes of the United States. In such cases, the
6 Congress must have a high degree of confidence that
7 the reports are in accordance with paragraph (4).

8 (8) The Congress needs impartial, objective,
9 and juridical advice to determine the appropriate re-
10 sponse to reports of dispute settlement panels and
11 the Appellate Body.

12 (9) The United States remains committed to
13 the multilateral, rules-based trading system.

14 (b) PURPOSE.—It is the purpose of this title to pro-
15 vide for the establishment of the Congressional Advisory
16 Commission on WTO Dispute Settlement to provide objec-
17 tive and impartial advice to the Congress on the operation
18 of the dispute settlement system of the World Trade Orga-
19 nization.

20 **SEC. 403. ESTABLISHMENT OF COMMISSION.**

21 (a) ESTABLISHMENT.—There is established a com-
22 mission to be known as the Congressional Advisory Com-
23 mission on WTO Dispute Settlement (in this title referred
24 to as the “Commission”).

25 (b) MEMBERSHIP.—

1 (1) COMPOSITION.—The Commission shall be
2 composed of 5 members, all of whom shall be judges
3 or former judges of the Federal judicial circuits and
4 shall be appointed by the Speaker of the House of
5 Representatives and the President pro tempore of
6 the Senate after considering the recommendations of
7 the Chairman and ranking member of the Com-
8 mittee on Finance of the Senate and the Chairman
9 and ranking member of the Committee on Ways and
10 Means of the House of Representatives. Commis-
11 sioners shall be chosen without regard to political af-
12 filiation and solely on the basis of each Commis-
13 sioner's fitness to perform the duties of a Commis-
14 sioner.

15 (2) DATE.—The appointments of the initial
16 members of the Commission shall be made not later
17 than 90 days after the date of the enactment of this
18 Act.

19 (c) PERIOD OF APPOINTMENT; VACANCIES.—

20 (1) IN GENERAL.—Members of the Commission
21 shall each be appointed for a term of 5 years, except
22 that of the members first appointed, 3 members
23 shall be appointed for terms of 3 years.

24 (2) VACANCIES.—

1 (A) IN GENERAL.—Any vacancy on the
2 Commission shall not affect its powers, but
3 shall be filled in the same manner as the origi-
4 nal appointment was made and shall be subject
5 to the same conditions as the original appoint-
6 ment.

7 (B) UNEXPIRED TERM.—An individual
8 chosen to fill a vacancy shall be appointed for
9 the unexpired term of the member replaced.

10 (d) INITIAL MEETING.—Not later than 30 days after
11 the date on which all members of the Commission have
12 been appointed, the Commission shall hold its first meet-
13 ing.

14 (e) MEETINGS.—The Commission shall meet at the
15 call of the Chairperson.

16 (f) QUORUM.—A majority of the members of the
17 Commission shall constitute a quorum, but a lesser num-
18 ber of members may hold hearings.

19 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
20 Commission shall select a Chairperson and Vice Chair-
21 person from among its members.

22 (h) FUNDING.—Members of the Commission shall be
23 allowed travel expenses, including per diem in lieu of sub-
24 sistence at rates authorized for employees of agencies
25 under subchapter I of chapter 57 of title 5, United States

1 Code, while away from their homes or regular places of
2 business in the performance of services for the Commis-
3 sion.

4 **SEC. 404. DUTIES OF THE COMMISSION.**

5 (a) ADVISING CONGRESS ON THE OPERATION OF
6 THE WTO DISPUTE SETTLEMENT SYSTEM.—

7 (1) IN GENERAL.—The Commission shall re-
8 view—

9 (A) all adverse reports of dispute settle-
10 ment panels and the Appellate Body which
11 are—

12 (i) adopted by the Dispute Settlement
13 Body; and

14 (ii) the result of a proceeding initiated
15 against the United States by a WTO mem-
16 ber; and

17 (B) upon the request of the Committee on
18 Ways and Means of the House of Representa-
19 tives or the Committee on Finance of the Sen-
20 ate—

21 (i) any adverse report of a dispute
22 settlement panel or the Appellate Body—

23 (I) which is adopted by the Dis-
24 pute Settlement Body; and

1 (II) in which the United States is
2 a complaining party; or

3 (ii) any other finding which is con-
4 tained in a report of a dispute settlement
5 panel or the Appellate Body that is adopt-
6 ed by the Dispute Settlement Body.

7 (2) SCOPE OF REVIEW.—The Commission shall
8 advise the Congress in connection with each adverse
9 finding or other finding under paragraph (1) (B)
10 only whether—

11 (A) the dispute settlement panel or the Ap-
12 pellate Body, as the case may be—

13 (i) exceeded its authority or its terms
14 of reference;

15 (ii) added to the obligations, or dimin-
16 ished the rights, of the United States
17 under the Uruguay Round Agreement
18 which is the subject of the finding;

19 (iii) acted arbitrarily or capriciously,
20 engaged in misconduct, or demonstrably
21 departed from the procedures specified for
22 panels and the Appellate Body in the ap-
23 plicable Uruguay Round Agreement; and

24 (iv) deviated from the applicable
25 standard of review, including in anti-

1 dumping, countervailing duty, and other
2 unfair trade remedy cases, the standard of
3 review set forth in Article 17.6 of the
4 Agreement on Implementation of Article
5 VI of the General Agreement on Tariffs
6 and Trade 1994; and

7 (B) the finding is consistent with the origi-
8 nal understanding by the United States of the
9 Uruguay Round Agreement that is the subject
10 of the finding as explained in the statement of
11 administrative action approved under section
12 101(a) of the Uruguay Round Agreements Act
13 (19 U.S.C. 3511(a)).

14 (3) NO DEFERENCE.—Applying the standards
15 set forth in paragraph (2) does not require deference
16 to findings of law made by the dispute settlement
17 panel or the Appellate Body, as the case may be.

18 (b) DETERMINATION; REPORT.—

19 (1) DETERMINATION.—

20 (A) IN GENERAL.—Not later than 150
21 days after the date on which the Commission
22 receives notice of a report or request under sec-
23 tion 405(b), the Commission shall make a writ-
24 ten determination with respect to the matters
25 described in paragraph (2) of subsection (a), in-

cluding a full analysis of the basis for its determination. A vote by a majority of the members of the Commission shall constitute a determination of the Commission, although the members need not agree on the basis for their vote.

(B) DISSENTING OR CONCURRING OPINIONS.—Any member of the Commission who disagrees with a determination of the Commission or who concurs in such a determination on a basis different from that of the Commission or other members of the Commission, may write an opinion expressing such disagreement or concurrence, as the case may be.

(2) REPORT.—The Commission shall promptly report the determinations described in paragraph (1)(A) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Commission shall include with the report any opinions written under paragraph (1)(B) with respect to the determination.

(c) AVAILABILITY TO THE PUBLIC.—Each report of the Commission under subsection (b)(2), together with the opinions included with the report, shall be made available to the public.

1 **SEC. 405. POWERS OF THE COMMISSION.**

2 (a) HEARINGS.—The Commission may hold a public
3 hearing to solicit views concerning a report of a dispute
4 settlement panel or the Appellate Body described in sec-
5 tion 404(a)(1), if the Commission considers such hearing
6 to be necessary to carry out the purpose of this title. The
7 Commission shall provide reasonable notice of a hearing
8 held pursuant to this subsection.

9 (b) INFORMATION FROM INTERESTED PARTIES AND
10 FEDERAL AGENCIES.—

11 (1) NOTICE TO COMMISSION.—

12 (A) UNDER SECTION 404(a)(1)(A).—The
13 Trade Representative shall advise the Commis-
14 sion not later than 5 business days after the
15 date the Dispute Settlement Body adopts a re-
16 port of a panel or the Appellate Body that is
17 to be reviewed by the Commission under section
18 404(a)(1)(A).

19 (B) UNDER SECTION 404(a)(1)(B).—The
20 Committee on Ways and Means or the Com-
21 mittee on Finance, as the case may be, may
22 make and notify the Commission of a request
23 under section 404(a)(1)(B) not later than 1
24 year after the Dispute Settlement Body adopts
25 the report that is the subject of the request.

1 (C) REPORTS ADOPTED PRIOR TO AP-
2 POINTMENT OF COMMISSION.—With respect to
3 any report to which section 404(a)(1)(B) ap-
4 plies and that is adopted before the date on
5 which the first members of the Commission are
6 appointed under section 403(b)(2), the Com-
7 mittee on Ways and Means or the Committee
8 on Finance, as the case may be, may make and
9 notify the Commission of a request under sec-
10 tion 404(a)(1)(B) with respect to that report
11 not later than 1 year after the date on which
12 the first members of the Commission are ap-
13 pointed under section 403(b)(2).

14 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
15 MATION.—

16 (A) IN GENERAL.—The Commission shall
17 promptly publish in the Federal Register notice
18 of the notice received under paragraph (1) from
19 the Trade Representative, the Committee on
20 Ways and Means, or the Committee on Fi-
21 nance, as the case may be, along with notice of
22 an opportunity for interested parties to submit
23 written comments to the Commission. The
24 Commission shall make comments submitted

1 pursuant to the preceding sentence available to
2 the public.

3 (B) INFORMATION FROM FEDERAL AGEN-
4 CIES AND DEPARTMENTS.—The Commission
5 may also secure directly from any Federal de-
6 partment or agency such information as the
7 Commission considers necessary to carry out
8 the provisions of this title. Upon the request of
9 the chairperson of the Commission, the head of
10 such department or agency shall furnish the in-
11 formation requested to the Commission in a
12 timely manner.

13 (3) ACCESS TO PANEL AND APPELLATE BODY
14 DOCUMENTS.—

15 (A) IN GENERAL.—The Trade Representa-
16 tive shall make available to the Commission all
17 submissions and relevant documents relating to
18 a report of a panel or the Appellate Body de-
19 scribed in section 404(a)(1), including any in-
20 formation contained in such submissions identi-
21 fied by the provider of the information as pro-
22 prietary information or information designated
23 as confidential by a foreign government.

24 (B) PUBLIC ACCESS.—Any document
25 which the Trade Representative submits to the

1 Commission shall be available to the public, ex-
2 cept information which is identified as propri-
3 etary or confidential or the disclosure of which
4 would otherwise violate the rules of the WTO.

5 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
6 FIDENTIALITY.—

7 (1) ADMINISTRATIVE ASSISTANCE.—Any agency
8 or department of the United States that is des-
9 ignated by the President shall provide administrative
10 services, funds, facilities, staff, or other support
11 services to the Commission to assist the Commission
12 with the performance of the Commission's functions.

13 (2) CONFIDENTIALITY.—The Commission shall
14 protect from disclosure any document or information
15 submitted to it by a department or agency of the
16 United States which the agency or department re-
17 quests be kept confidential. The Commission shall
18 not be considered to be an agency for purposes of
19 section 552 of title 5, United States Code.

20 **SEC. 406. REPORT BY UNITED STATES TRADE REPRESENTA-**
21 **TIVE.**

22 (a) IN GENERAL.—Not later than 90 days after the
23 third instance in which the Commission, under section
24 402(a)(2), advises Congress in the affirmative with respect
25 to one or more actions specified in section 402(a)(2)(A),

1 the United States Trade Representative shall submit to
2 the congressional committees specified in subsection (c) a
3 report detailing a course of action for reforming the WTO
4 dispute settlement process so as to ensure that dispute set-
5 tlement panels and the Appellate Body do not take actions
6 specified in section 402(a)(2)(A).

7 (b) FOLLOW-UP REPORTS.—Once the United States
8 Trade Representative submits to the congressional com-
9 mittees a report under subsection (a), the United States
10 Trade Representative shall thereafter submit to those
11 committees, not less frequently than once every six
12 months, a report detailing the progress made with respect
13 to reforming the WTO dispute settlement process (as de-
14 scribed in subsection (a)).

15 (c) SPECIFIED COMMITTEES.—The committees re-
16 ferred to in subsection (a) are the Committee on Ways
17 and Means of the House of Representatives and the Com-
18 mittee on Finance of the Senate.

19 **SEC. 407. DEFINITIONS.**

20 In this title:

21 (1) ADVERSE FINDING.—The term “adverse
22 finding” means—

23 (A) in a proceeding of a panel or the Ap-
24 pellate Body that is initiated against the United
25 States, a finding by the panel or the Appellate

1 Body that any law or regulation of, or applica-
2 tion thereof by, the United States, or any State,
3 is inconsistent with the obligations of the
4 United States under a Uruguay Round Agree-
5 ment (or nullifies or impairs benefits accruing
6 to a WTO member under such an Agreement);
7 or

8 (B) in a proceeding of a panel or the Ap-
9 pellate Body in which the United States is a
10 complaining party, any finding by the panel or
11 the Appellate Body that a measure of the party
12 complained against is not inconsistent with that
13 party's obligations under a Uruguay Round
14 Agreement (or does not nullify or impair bene-
15 fits accruing to the United States under such
16 an Agreement).

17 (2) APPELLATE BODY.—The term “Appellate
18 Body” means the Appellate Body established by the
19 Dispute Settlement Body pursuant to Article 17.1 of
20 the Dispute Settlement Understanding.

21 (3) DISPUTE SETTLEMENT BODY.—The term
22 “Dispute Settlement Body” means the Dispute Set-
23 tlement Body established pursuant to the Dispute
24 Settlement Understanding.

1 (4) DISPUTE SETTLEMENT PANEL; PANEL.—

2 The terms “dispute settlement panel” and “panel”
3 mean a panel established pursuant to Article 6 of
4 the Dispute Settlement Understanding.

5 (5) DISPUTE SETTLEMENT UNDERSTANDING.—

6 The term “Dispute Settlement Understanding”
7 means the Understanding on Rules and Procedures
8 Governing the Settlement of Disputes referred to in
9 section 101(d)(16) of the Uruguay Round Agree-
10 ments Act (19 U.S.C. 3511(d)(16)).

11 (6) TERMS OF REFERENCE.—The term “terms
12 of reference” has the meaning given such term in
13 the Dispute Settlement Understanding.

14 (7) TRADE REPRESENTATIVE.—The term
15 “Trade Representative” means the United States
16 Trade Representative.

17 (8) URUGUAY ROUND AGREEMENT.—The term
18 “Uruguay Round Agreement” means any of the
19 Agreements described in section 101(d) of the Uru-
20 guay Round Agreements Act.

21 (9) UNITED STATES PERSON.—The term
22 “United States person” means—

23 (A) a United States citizen or an alien ad-
24 mitted for permanent residence into the United
25 States; and

1 (B) a corporation, partnership, or other
2 legal entity organized under the laws of the
3 United States or of any State, the District of
4 Columbia, or any commonwealth, territory, or
5 possession of the United States.

6 (10) WORLD TRADE ORGANIZATION; WTO.—The
7 terms “World Trade Organization” and “WTO”
8 mean the organization established pursuant to the
9 WTO Agreement.

10 (11) WTO AGREEMENT.—The term “WTO
11 Agreement” means the Agreement Establishing the
12 World Trade Organization entered into on April 15,
13 1994.

14 (12) WTO MEMBER.—The term “WTO mem-
15 ber” has the meaning given that term in section
16 2(10) of the Uruguay Round Agreements Act (19
17 U.S.C. 3501(10)).

18 **SEC. 408. EFFECTIVE DATE.**

19 This title shall take effect on the date of the enact-
20 ment of this Act.

**TITLE V—STEEL IMPORT
LICENSING AND MONITORING**

**SEC. 501. MAINTENANCE AND EXPANSION OF STEEL IM-
PORT LICENSING AND MONITORING PRO-
GRAM.**

(a) MAINTENANCE OF PROGRAM.—The steel import licensing and monitoring program established by the Secretary of the Treasury and the Secretary of Commerce pursuant to the Memorandum signed by the President on March 5, 2002 (67 Fed. Reg. 10593 through 10597) (pursuant to the authority of the President under section 203(g) of the Trade Act of 1974), shall, notwithstanding any other action taken by the President under section 203 of the Trade Act of 1974 concerning the steel products described in the Memorandum, remain in effect and be established by the Secretary of Commerce as a permanent program.

(b) EXPANSION OF PROGRAM.—

(1) IN GENERAL.—In carrying out the program in accordance with subsection (a), the Secretary of the Treasury and the Secretary of Commerce shall expand the program to include all iron and steel, and all articles of iron or steel, described in paragraph (2). The import and licensing data made available to the public as part of this program shall

1 be released based upon classifications at the tenth
2 digit level of the Harmonized Tariff Schedule of the
3 United States.

4 (2) IRON AND STEEL DESCRIBED.—The iron
5 and steel, and articles of iron or steel, referred to in
6 subparagraph (A) are the iron and steel, and articles
7 of iron or steel, contained in the following headings
8 and subheadings of the Harmonized Tariff Schedule
9 of the United States:

10 (A) Each of the headings 7206 through
11 7229 (relating to mill products).

12 (B) Each of the headings 7301 through
13 7307 (relating to rails, structurals, pipe and
14 tubes, and fittings and flanges).

15 (C) Heading 7308 (relating to fabricated
16 structurals).

17 (D) Subheading 7310.10.00 (relating to
18 barrels and drums).

19 (E) Heading 7312 (relating to strand and
20 rope).

21 (F) Heading 7313.00.00 (relating to
22 barbed and fence wire).

23 (G) Headings 7314, 7315, and 7317.00
24 (relating to fabricated wire).

1 (H) Heading 7318 (relating to industrial
2 fasteners).

3 (I) Heading 7326 (relating to fence posts).

4 (c) ADDITIONAL AUTHORITY.—The Secretary of the
5 Treasury and the Secretary of Commerce are hereby au-
6 thorized and directed to take such actions as are nec-
7 essary—

8 (1) to maintain the program described in sub-
9 section (a) in accordance with such subsection; and

10 (2) to expand, as necessary and appropriate,
11 such program in accordance with subsection (b).

12 **TITLE VI—MISCELLANEOUS** 13 **PROVISIONS**

14 **SEC. 601. CONSTRUCTION.**

15 The amendments made by this Act shall not be con-
16 strued to create any inference with respect to the interpre-
17 tation of the provisions of law amended by this Act as
18 such provisions were in effect before the enactment of this
19 Act.

20 **SEC. 602. APPLICATION TO GOODS FROM CANADA AND** 21 **MEXICO.**

22 Pursuant to section 1902 of the North American
23 Free Trade Agreement and section 408 of the North
24 American Free Trade Agreement Implementation Act, the

1 amendments made by this Act shall apply to goods from
2 Canada and Mexico.

3 **SEC. 603. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

4 (a) IN GENERAL.—If the United States Trade Rep-
5 resentative, in proceedings before a dispute settlement
6 panel or the Appellate Body of the WTO, seeks—

7 (1) to enforce United States rights under a
8 multilateral trade agreement, or

9 (2) to defend a challenged action or determina-
10 tion of the United States Government,

11 a private United States person that is supportive of the
12 United States Government’s position before the panel or
13 Appellate Body and that has a direct economic interest
14 in the panel’s or Appellate Body’s resolution of the mat-
15 ters in dispute shall be permitted to participate in con-
16 sultations and panel proceedings. The Trade Representa-
17 tive shall issue regulations, consistent with subsections (b)
18 and (c), ensuring full and effective participation by any
19 such private person.

20 (b) ACCESS TO INFORMATION.—The United States
21 Trade Representative shall make available to persons de-
22 scribed in subsection (a) all information presented to or
23 otherwise obtained by the Trade Representative in connec-
24 tion with a WTO dispute settlement proceeding. The
25 United States Trade Representative shall promulgate reg-

1 ulations implementing a protective order system to protect
2 information designated by the submitting member as con-
3 fidential.

4 (c) PARTICIPATION IN PANEL PROCESS.—Upon re-
5 quest from a person described in subsection (a), the
6 United States Trade Representative shall—

7 (1) consult in advance with such person regard-
8 ing the content of written submissions from the
9 United States to the WTO panel concerned or to the
10 other member countries involved;

11 (2) include, if appropriate, such person or its
12 appropriate representative as an advisory member of
13 the delegation in sessions of the dispute settlement
14 panel;

15 (3) allow such special delegation member, if
16 such member would bring special knowledge to the
17 proceeding, to appear before the panel, directly or
18 through counsel, under the supervision of responsible
19 United States Government officials; and

20 (4) in proceedings involving confidential infor-
21 mation, allow the appearance of such person only
22 through counsel as a member of the special delega-
23 tion.

24 (d) DEFINITIONS.—In this section:

1 (1) APPELLATE BODY.—The term “Appellate
2 Body” means the Appellate Body established under
3 Article 17.1 of the Dispute Settlement Under-
4 standing.

5 (2) DISPUTE SETTLEMENT PANEL; PANEL.—
6 The terms “dispute settlement panel” and “panel”
7 mean a panel established pursuant to Article 6 of
8 the Dispute Settlement Understanding.

9 (3) DISPUTE SETTLEMENT UNDERSTANDING.—
10 The term “Dispute Settlement Understanding”
11 means the Understanding on Rules and Procedures
12 Governing the Settlement of Disputes referred to in
13 section 101(d)(16) of the Uruguay Round Agree-
14 ments Act.

15 (4) UNITED STATES PERSON.—The term
16 “United States person” means—

17 (A) a United States citizen or an alien ad-
18 mitted for permanent residence into the United
19 States; and

20 (B) a corporation, partnership, or other
21 legal entity organized under the laws of the
22 United States or of any State, the District of
23 Columbia, or any commonwealth, territory, or
24 possession of the United States.

1 (5) WTO.—The term “WTO” means the orga-
2 nization established pursuant to the WTO Agree-
3 ment.

4 (6) WTO AGREEMENT.—The term “WTO
5 Agreement” means the Agreement Establishing the
6 World Trade Organization entered into on April 15,
7 1994.

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